IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 29049 of 2006(G)

PETITIONER:

YESODA, AGED 67 YEARS,
D/O.KUNCHU, VILAYIL VEEDU, HOUSE NO.KP 1/384,
(OLD HOUSE NO.KP 1/427), KARAVARAM VILLAGE,
KALLAMBALAM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT,
THIRUVANANTHAPURAM-695 001.

2. TAHSILDAR, CHIRAYINKEEZHU TALUK OFFICE,
ATTINGAL-695 101.

3. KARAVARAM PANCHAYAT, REPRESENTED
BY ITS SECRETARY, KARAVARAM-695 605.

R3 BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.SABU SREEDHARAN
R1 R2 BY GOVERNMENT PLEADER SRI. K.J. MOHAMMED ANZAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.29049 of 2006

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Dated this the 13th day of June, 2007

JUDGMENT

Prayers in the writ petition are as follows:

(i) To call for the records relating to Exts.P1 to P7 and to issue a writ of mandamus commanding the 3rd respondent (Panchayat) not to survey the property of the petitioner stated in Exts.P1 to P6 and also not to evict her from the said property;

(ii) To issue a writ of mandamus declaring that the property having an extent of 7.410 cents of land described as Puramboke in Ext.P5 notice as the property is in the exclusive possession and enjoyment of the petitioner and it is not a Panchayat property, to be recovered by the Panchayat;

(iii) To issue a writ of mandamus commanding the respondents 1 and 2 to issue patta in respect of 7.410 cents of land in Survey No.596 (Resurvey No.23/4 of Karavaram Village to the petitioner."

2. Case of the petitioner in brief is as follows:

Petitioner is a poor lady. She is working as maid servant. She is not having any permanent building except a small hut where she is residing and it was located in 7 cents of property which is in her absolute possession for the last more than 60 years, to be accurate from 1113 M.E. It is stated that in respect of the above said 7 cents where the hut is located which is included as Puthuval Dehannam as per Ext.P3 document tax is also paid and is collected till 1995. The second respondent (Tahsildar) issued notice stating that 7.410 cents of property adjoining the property of the original title deed is in the possession and enjoyment of the petitioner, the same was described as puramboke land and accordingly the petitioner was asked to appear and show cause as to why proceedings under the Land Conservancy Act shall not be taken. Petitioner entered appearance but no prohibitory assessment was passed and in fact land tax was received after the issuance of Ext.P5 notice. Thus according to the petitioner revenue authorities have accepted the said property as the absolute property of the petitioner and till this date no notice was issued to the petitioner taking the property as a puramboke land or the possession of

the petitioner as an illegal or unauthorised possession. It is stated that the adjoining properties were assigned to the respective persons who were in possession. Adjoining the property there is a Panchayat road. The Panchayat has no right over the property in the occupation of the petitioner. But the Secretary of the Panchayat accompanied by Taluk Surveyor came to the property and tried to measure the property. The same was obstructed by the petitioner and she gave a complaint to the first respondent stating that the action is illegal. In such circumstances, petitioner has approached this court. The main contention of the petitioner is that the property is not a Panchayat property and it does not vest with the Panchayat merely for the reason that it abuts the Panchayat road. According to her, property, which is in the possession of the petitioner is a property liable for assignment and was in the exclusive possession and enjoyment of the petitioner and she and her family are residing in the hut located therein.

3. Counter affidavit is filed by the second respondent Tahsildar inter alia stating as follows:

Petitioner has encroached on 7.41 cents of puramboke land which

is adjacent to the petitioner's pathivu land. She has built up a hut on the encroached property and has been living therein. She is having 22 cents of pathivu land adjacent to the encroached land. Village Officer has booked L.C.Case against the encroachment and action was taken under the Kerala Land Conservancy Act by issuing B form notice. Petitioner appeared and admitted the offence. No relief can be granted. In the light of the statement prohibitory assessment order was issued imposing a fine of Rs.340/-, Rs.240/- as prohibitory tax and Rs.100/- as fine. Petitioner remitted the amount. The amount is not land tax as claimed by the petitioner. As against the encroachment, notice dated 30.6.1995 was issued and petitioner remitted the amount on 12.9.1995.

4. In the counter affidavit filed by the Panchayat it is stated that the petitioner with her children are owners in possession of 1.72 Ares which is lying adjacent to the property in question. Ext.R3(a) is the possession certificate. Petitioner has constructed a building with two rooms having concrete roofing and three rooms which are having tiled roofing. Relevant page of the building tax assessment register of the Panchayat is produced as Ext.R3(b). Thus the statement of the

petitioner that the hut is the only residence of the petitioner is false. Petitioner is well off and not working as maid servant. It is stated that the petitioner is having two of her sons working in Gulf and one of her sons is having his own autorickshaw and her two daughters have been given in marriage and have been given their shares. It is stated that eight cents of property in Sy. No.23/4 is Edavazhy puramboke and the same has been encroached by the petitioner and she has constructed a thatched hut therein for the purpose of encroachment.

5. Even though a contention is taken in the counter affidavit that the property is Edavazhy puramboke and is the property of the third respondent, learned counsel appearing for the Panchayat submits that the said contention is not pressed. In other words, he submits that the Panchayat is not claiming that it is a land vested with the Panchayat.

6. Reply affidavit is filed by the petitioner.

7. As far as the first prayer is concerned, to direct the third respondent not to survey the property and also not to evict her is concerned, learned counsel for the Panchayat submits that the Panchayat does not propose to evict the petitioner as Panchayat does

not treat it as a property vested in the Panchayat. All that the Panchayat has done is passed a resolution calling upon the revenue officials to take action in accordance with law under the Land Conservancy Act. In the light of this stand by the Panchayat all that I need is to record the same and further direct that the Panchayat shall not evict the petitioner from the land in question.

8. As far as the second prayer is concerned, I feel that it is not for this court to declare that the petitioner is in exclusive possession and enjoyment of the property. The only relief that can be granted in the light of the stand taken by the counsel for the Panchayat is to declare that the land is not a Panchayat land.

9. As far as the third prayer is concerned, which is to issue patta to the petitioner, I do not think that the petitioner can ask for a mandamus to issue patta. All that I need to say is that the issuance of patta is a matter governed by the relevant rules and it is for the petitioner to take up the matter before the authorities in accordance with law. It is made clear that I need not pronounce on the right of the second respondent to take steps in accordance with law, if so advised to

evict the petitioner, and in the event of any such event taken place, it is open to the petitioner to raise all available contentions before the authorities.

(K.M. JOSEPH, JUDGE)

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